Federal Court  Cour fédérale

**Date: 20120323**

**Docket: IMM-6725-11**

**Citation: 2012 FC 354**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Ottawa, Ontario, March 23, 2012**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**WATSON SAINT-FÉLIX**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision of a Pre-Removal Risk Assessment (PRRA) officer, informing the applicant that the initial decision relating to him was not final, for lack of jurisdiction, and that a final decision would need to be made by the Minister's Delegate.

**FACTS**

[2] The applicant, a Haitian citizen, came to Canada in 1997 at the age of seven as a permanent resident. In October 2008, he was sentenced to a term of three and a half years' imprisonment for robbery, conspiracy and forcible confinement. He then lost his permanent resident status on grounds of serious criminality and a removal order was issued against him. As a result, he was detained at the Rivière-des-Prairies Detention Centre in Montréal.

[3] In July 2011, the applicant submitted a PRRA application. On August 11, 2011, the PRRA officer delivered a positive decision, determining that he was a person at risk within the meaning of section 97 of the IRPA. The officer stayed the removal order issued against the applicant, but indicated in his letter that he did not have protected person status and that his case could be reassessed should new circumstances arise. Following that decision, the applicant was released from custody.

[4] One week later, on September 14, 2011, the same PRRA officer notified the applicant that the first decision contained errors because he lacked jurisdiction at the time he rendered that decision, hence the present application for judicial review.

**ANALYSIS**

[5] Was the PRRA officer *functus officio* at the time the decision was delivered on August 11, 2011?

[6] On the one hand, the applicant argues that a PRRA officer is *functus officio* once his or her decision has been delivered and disclosed to the person concerned. Consequently, he no longer had jurisdiction to deliver the second decision, dated September 14, 2011. The applicant bases this argument on *Monongo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 491, [2009] FCJ 596 and *Chudal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073, [2005] FCJ 1327.

[7] On the other hand, the respondent contends that it matters little whether the PRRA officer had jurisdiction to deliver a second decision in accordance with the applicable law, he does not have the authority to grant a stay of the removal order or even to grant Canada's protection. Consequently, the decision delivered on August 11, 2011, is not *res judicata* and the assessment of the PRRA application may proceed according to the procedure set out in the IRPA and in the *Immigration and Refugee Protection Regulations* (IRPR). A judgment by this Court setting aside the decision dated September 14, 2011, would therefore be of no practical effect. The letter dated September 14, 2011, is nothing more than an administrative act which is not subject to judicial review; it is simply a courtesy letter to rectify the administrative act and to modify the assessment in accordance with the powers conferred upon the officer under the IRPA. I concur with this view.

[8] In this case, it is clear that the officer could not grant a stay to the applicant because he did not have jurisdiction to do so.

[9] Thus, the Act provides that in cases where a foreign national is determined to be inadmissible on grounds of serious criminality, a PRRA officer must first assess the risks to which the applicant would be exposed upon their return (paragraph 172(2)(*a*) of the IRPR). If a risk is identified, an analyst from the Danger to the Public/Rehabilitation Unit, under the authority of Citizenship and Immigration Canada (CIC), must then assess whether the applicant's presence in Canada constitutes a danger to the public or to the security of Canada, or whether the nature and severity of the acts committed by the applicant warrant the rejection of the PRRA application (paragraph 172(2)(*b*)). Lastly, the Minister's Delegate, also under the authority of CIC, takes the assessments into consideration, along with the supporting documentation and observations submitted by the applicant, before determining whether the applicant is entitled to a stay of the removal order (paragraph 113(*d*) of the IRPA and subsection 172(1) of the IRPR). A positive decision with regard to the applicant can only have the effect of granting a stay, which is reviewable by the Minister at any time, according to the written procedure (section 114 of the IRPA and section 173 of the IRPR).

[10] This means that the PRRA officer did not have the delegated authority to deliver a decision granting Mr. Saint-Félix a stay, as his role was limited to rendering an assessment which could be later considered by the delegate. The *Minister* could not be bound by the stay that had been granted

(Canada (*Minister of National Revenue*) *v Inland Industries Limited*, [1974] SCR 514, 23 DLR (3d) 677).

[11] The letter dated August 11, 2011, containing the PRRA officer's assessment is simply one administrative act among others which where used to deliver the final decision. The same applies to the letter dated September 14, 2011, which simply corrected the previous letter to render it compliant with the applicable law. However, the decision of the Minister's Delegate does carry legal consequences and will be subject to judicial review.

[12] The present application for judicial review is premature and will be dismissed. No questions were proposed for certification and none will be certified.

**JUDGMENT**

**THE COURT ORDERS that** that the application for judicial review be dismissed. No question is certified.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Sebastian Desbarats, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-6725-11 |
| **STYLE OF CAUSE:** | WATSON SAINT-FÉLIX<br>v<br>MCI |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | March 20, 2012 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Tremblay-Lamer J. |
| **DATED:** | March 23, 2012 |

**APPEARANCES:**

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|---|---|
| Stéphane Handfield | **FOR THE APPLICANT** |
| Ian Demers | **FOR THE RESPONDENT** |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Stéphane Handfield<br>Montréal, Quebec | **FOR THE APPLICANT** |
| Myles J. Kirvan<br>Deputy Attorney General of Canada<br>Montréal, Quebec | **FOR THE RESPONDENT** |